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IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.409 of 1994

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Nageshwar Prasad

.... Appellant/s

Versus

Shyam Sunder Rai Sharma & Ors

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Nand Kishore Prasad Sinha
Mr. Satish Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

6 13-03-2015 Heard Mr. Nand Kishore Prasad Sinha, learned Counsel appearing for the appellant and also perused the office notes.

The petition dated 1.11.1994 filed on behalf of heirs of sole appellant has been placed by the office for appropriate orders. It has been pointed out by the office that this appeal has already been heard and dismissed at the stage of Order 41 Rule 11 CPC by order dated 29.4.2002. It has been further pointed out that by the earlier order dated 9.4.2002 itself the aforesaid petition filed by the heirs of the deceased sole appellant was directed to be considered at the time of hearing of the appeal under Order 41 Rule 11 CPC and even though the said petition was placed along with the appeal while placing the appeal for hearing under Order 41 Rule 11 COC but no order could be passed before dismissing the appeal at that stage.

Mr. Sinha, learned Counsel through whom this appeal had been filed and who has also appeared for the heirs of the deceased appellant, who have filed the said petition dated 1.11.1994, submits

that the matter was fully heard on merits and thereafter the order dated 29.4.2002 was passed. It is the categorical stand of the Counsel that no prejudice has been caused to the applicants when no order was passed on the petition dated 1.11.1994 which could not be pressed due to bonafide mistake of the Court. It has also been submitted by the learned Counsel that the aforesaid petition is required to be disposed of as there would be difficulty in preparation of the decree if the said petition remains pending.

After considering the facts and circumstances of the case and the aforesaid stand of the learned Counsel for the heirs of the deceased sole appellant, it is limpid that the sole appellant of this appeal was dead during pendency of the appeal in the court below and his heirs were substituted in the court below itself and his name was ordered to be expunged. However, by mistake of the office of the Court name of the deceased appellant continued to appear in the records. The present appeal appears to have been filed under the said misconception. However, without going further in the matter, in view of the fact that this appeal has already been disposed of by order dated 29.4.2002 and there is no grievance on behalf of the applicants (heirs of the deceased sole appellant) who have accepted that they have been fully heard before disposal of this appeal on merits, the application dated 1.11.1994 is allowed and the name of the heirs and legal representatives of the deceased sole appellant are directed to be added as appellants in this appeal and the name of the deceased sole appellant is struck off from the memo of appeal. It is noted that the heirs and legal representatives of the deceased sole

appellant had already appeared and filed their Vakalatnama on 31.10.1994 itself.

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(V. Nath, J.)

Snkumar/-

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